anything for the complainants, with one of the available *facta probantia* which was that in fact he did nothing.

In the circumstances, I am bound to say that the learned President never applied his mind to the main issue he had to decide. The case against the appellant as opened by the prosecution was not proved and the real case against him as it emerged from the evidence was never considered. The convictions therefore cannot stand and the appeal must be allowed.

The only remaining question which has caused me difficulty is whether or not I should order a re-trial. I do not propose to do so. On the evidence it was not the appellant who approached the complainants. It was the complainants who approached him. I have little doubt that what happened was that being in trouble they approached him as a person who had influence with the authorities, that he being a person with few, if any, moral scruples, was quite prepared to accept the money which they were willing to pay him, and that the only understanding between them was that if he could do anything to assist them he would do it. That may be an example of certain practices which are said to be very prevalent in this country but it does not amount to cheating within the meaning of the Penal Code.

Appeal allowed.

LIM KIAT HEAN AND ANOTHER v. REX.

[App. Crim. Juris. (Gordon-Smith, Ag. C.J.) Jan. 13, 1949]

[Singapore — Magistrate's Appeal No. 224 of 1948]

Liquors Revenue Ordinance (225), ss. 38(1) and 87 — Sale of liquor from licensed premises for consumption on unlicensed premises.

In this case the facts shortly were that two Revenue Officers took their seats on a table on the lawn of a Rest House, which was not licensed for the sale of intoxicating liquor, and ordered a chop and a bottle of beer. The waiter said that there was no beer for sale at the Rest House and the Revenue Officers then asked him to "go outside" and buy it. The waiter did so and bought the bottle of beer at a licensed premises with his own money. The waiter and the managing partner of the Rest House were charged and convicted for selling the bottle of beer at the Rest House, such Rest House not having been licensed. They appealed against their conviction.

Held, (1) that on the facts the waiter purchased the bottle of beer as agent for the Revenue Officers and the only sale of beer was at the shop outside to the waiter as the agent of the Revenue Officers; (2) that the sale of beer at the shop outside was a sale to the Revenue Officers and that there was not, in law, a re-sale of the beer to the Revenue Officers at the Rest House.

Cases referred to:—

(1) *Ibrahim v. Public Prosecutor* (1933) M.L.J. 46.
(2) *Rex. v. J. W. Lim* (1941) M.L.J. 7.
(3) *Lambert v. Rowe* (1914) 1 K.B. 38.
(4) *Pasquier v. Neale* (1902) 2 K.B. 287.
(5) *Jones v. Mighall* 48 T.L.R. 636.
(6) *Allen v. Whitehead* (1930) 1 K.B. 211.
(7) *Boyle v. Smith* (1906) 1 K.B. 432.
(8) *Somerset v. Hart* 12 Q.B.D. 360.
(9) *Furby v. Hoey* (1947) 1 All E.R. 236.
(10) *Canadian Pacific Railway v. Lockhart* (1942) A.C. 591 at p. 599.
(11) *Coppen v. Moore (No. 2)* (1898) 2 Q.B. 306.

MAGISTRATE'S APPEAL.

T. W. Ong for the appellants.

A. D. Farrell (D.P.P.) for the Crown.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Gordon-Smith, Ag. C.J. : — This is an appeal by both accused against their conviction by the Magistrate on the 20th October, 1948, for a contravention of the Liquors Revenue Ordinance (Cap. 225), section 38(1), that is to say, for selling a bottle of beer at the Bedok Rest House at 11.10 p.m. on the previous 24th August, such Rest House not having been licensed. Both accused were fined $200.

The learned Magistrate in his judgment states that the evidence was only seriously disputed in two respects, namely, as to the cost of the beer at Chop Hock Seng and as to who opened the bottle at the table, and I accept his findings in these respects.

There is, however, no specific finding of fact on the evidence in one respect which I consider to be of importance, but in this respect I think the Magistrate accepted the evidence of accused No. 2 and I also accept his evidence in this respect. The facts, therefore, are briefly as follows, so far as really relevant to the issue before me:

Accused No. 1 is the managing partner of the Rest House and of some experience in these matters. I will call him the proprietor. Accused No. 2 is a waiter employed there, not of any great experience as such but he had been employed as a steward on a ship. The premises had been adapted at considerable expense and the place was opened and business commenced on the 21st August. An application for a liquor licence had been made but had not been granted on the 24th August and has not yet been granted, pending the

result of this appeal. All six waiters had been specifically warned that, pending the issue of a liquor licence, no such liquor was to be sold on the premises and there was no stock of liquor kept there. Nearby is Chop Hock Seng which is licensed for the sale of beer (but not spirits) under the Ordinance, and it is obvious, and was admitted by the owner (P.W. 9), that the issue of a licence to the Rest House would affect his business. He also admitted that a conviction of the proprietor of the Rest House would jeopardise the issue of the licence applied for.

It is also obvious that a scheme was concocted by the Revenue authorities to entrap the Rest House.

At about 10.45 p.m. on the 24th August two Revenue Officers (P.W. 3 and 4) took their sets at a table on the lawn of the Rest House and were attended by No. 2 accused. A discussion took place as to the order, price, etc. and P.W. 3 agreed in his evidence that he ordered a chop and a bottle of beer and asked No. 2 accused to bring them along. No money was tendered or asked for at the time. Accused No. 2 in his evidence went into greater detail as follows: "the customers asked me to go and buy this bottle of beer for them, by customers I mean the two Revenue Officers . . . . They said they wanted beer and I told them there was no beer for sale at the Bedok Rest House as there was no licence. Then they asked me to go and buy a bottle of beer for them from outside; they asked me to go to Chop Hock Seng. They did not mention Chop Hock Seng but just said 'from outside'. They did not give me any money to buy the beer. They asked me to pay for them and I trusted them and used my own money. That sale of beer was not entered in any chit or bill from the Rest House. The sale of the pork chop was entered in a chit or bill."

I accept these details as to what was said, as apparently did the learned Magistrate.

After the chop and bottle of beer had been partly consumed, the proprietor and No. 2 accused were arrested and charged by another and more senior Revenue Officer (P.W. 2) who was there with other revenue officers for observation purposes.

The learned Magistrate recorded that he was not satisfied beyond reasonable doubt that the proprietor was privy to the offence.

There was clear and uncontroverted evidence by the proprietor and others that at the commencement of business he had warned all his waiters that liquor or beer was not to be sold on the premises pending the issue of a licence and that the Rest House had no such liquor or beer on the premises. He frankly admitted that some customers had brought their own beer which was consumed at the tables and in the Rest House glasses. This warning was repeated on the morning of the 24th August. Waiters had been told that if his instructions were disregarded, they would be sacked.

The learned Magistrate based his conviction of No. 2 accused firstly on the ground that he made a profit on the beer and that he personally would have suffered any loss arising out of any possible loss by dropping the beer (*Ibrahim v. Public Prosecutor*[1]), and secondly on the ground that No. 2 accused did not ask for the money first, with which to purchase the beer (*Rex v. J. W. Lim*[2]). As regards the proprietor, he considered that No. 2 accused being employed by the former, the latter was acting within the scope of his employment and therefore by the presumption created by section 87 of the Ordinance (*see* Ordinance 27 of 1941) he was liable as if he himself had sold the beer.

Apart from the two cases cited by the learned Magistrate the following authorities were quoted to me in argument: — By Mr. Ong: *Lambert v. Rowe*[3]; *Pasquier v. Neale*[4]; *Jones v. Mighall*[5]; *Stones* Justices Manual, 79th Edition 1947, Volume 1, page 1114; *Allen v. Whitehead*[6]; *Boyle v. Smith*[7] and *Somerset v. Hart*[8]; and by Mr. Farrell: *Furby v. Hoey*[9]; *Hailsham* Volume 22, page 231 paragraphs 410 and 412; *Salmond* on Torts, 10th Edition page 89; *Canadian Pacific Railway v. Lockhart*[10] and *Coppen v. Moore (No. 2)*[11].

As regads the authorities quoted, there are certain very relevant passages, although it is clear that each case of this nature must be dealt with in regard to the particular facts in each such case.

Ibrahim's case, supra, was a clear case of an illegal sale of liquor, such being supported by documentary evidence. It was held that the fact that no profit was made on the sale was immaterial.

In *Lim's case, supra,* it was held that when a waiter goes outside the restaurant and purchase liquor for a customer, the sale of liquor takes place where the liquor is appropriated for the purpose and where the money is paid. Assuming that the restaurant proprietor has no interest in the shop where the liquor is sold or in any profit derived from the transaction, there is no sale contrary to section 38 of Cap. 225. The mere consumption of beer on unlicensed premises is no offence. This case is very much on all fours with the present case.

In *Pasquier v. Neale, supra,* the conviction was upheld because the restaurant proprietor was financially interested in the licensed premises that sold the beer —

a very important factor — but Lord Alverstone said, "It is obvious that if it is proved that the waiter is buying for the customer, the charge of selling liquor without a licence, cannot be supported; nothing could be simpler". This dictum was proved in *Jones v. Mighall* (the Ancient Order of Buffaloes Case), *supra.*

Boyle v. Smith, supra, was a case of a drayman employed to deliver beer only who, contrary to specific instructions, sold some beer. On a case stated, the dismissal of the charge against the owner by the Magistrate was upheld and confirmed. Lord Alverstone stated in the judgment as follows: "In my opinion, if a servant having no authority to sell at all, chooses to make a sale, *he,* not being a licensed person, is liable to the penalties under section 3. It seems to me that the fact that the drayman had no authority at all to do that which he did and was expressly forbidden to do, there was not a sale by the master contrary to section 3."

Furby v. Hoey, supra, is not a satisfactory case and the facts were confused but it did confirm that the sale took place at the licensed premises and not at the night club. Although the Court upheld the dismissal of the charge, it stated that other licensing offences, with which the accused had not been charged, had been committed.

Other non-licensing cases are not, in my opinion, particularly helpful, although in *Coppen v. Moore, supra* (the Merchandise Marks and Ham case) it was held that a *prima facie* case could be rebutted if the master proved that he had acted innocently and had taken all reasonable precautions against the commission of the offence but which the Magistrates had found he had *not* done.

In the present case both the master and the servant have been separately convicted and it is necessary to consider their cases separately.

As regard No. 2, the point is, was there a sale by him of the beer to the Revenue Officers at the Rest House, on the facts as stated above. There was, admittedly, a sale of the beer at the Chop, but to whom? In my opinion, No. 2 accused was acting in pursuance of specific instructions from the Revenue Officers to go outside and purchase beer for them and he did so at the Chop. In doing so he was acting as their agent and the sale at the Chop was to them. He delivered the beer to them as their agent, in accordance with their instructions, and, in my opinion, it is quite immaterial as to who opened the bottle.

Neither have I to decide the hypothetical question of civil liability, which might have arisen if the bottle had been broken and the beer lost in the course of being brought to, and served in, the Rest House.

As regards the fact that the Revenue Officer did not first hand the money to No. 2 accused with which to purchase the beer, this is also, in my opinion, irrelevant. It is not necessary for the principal to provide the agent with the necessary funds with which to complete a purchase and so effect a valid sale between a third party and the principal. Neither does the remuneration of the agent for carrying out his principal's instructions affect the question of the validity or otherwise of the purchase and sale. I hold, therefore, that the sale of the beer at the Chop was to the Revenue Officers and that there was not, in law, a re-sale of the beer at the Rest House to the Revenue Officers by the agent (No. 2 accused). This also disposes of the case against the proprietor, No. 1 accused, and it is unnecessary for me to go into the question of his possible vicarious liability under the amended section 87.

Nor is it necessary to consider the question of evidenct by accomplices, which undoubtedly the Revenue Officers were; in fact one might almost describe them as *agents provocateur* in the commission of the alleged offence.

For these reasons the appeals are allowed and the convictions quashed.

Appeals allowed.

HYDER v. REX.

[App. Crim. Juris. (Gordon-Smith, Ag. C.J.)
February 23, 1949]

[Singapore — Magistrate's Appeal No. 202 of 1948]

Criminal Procedure — Sentence — Whether sentences should be concurrent or consecutive.

In this case the learned District Judge convicted the appellant on two charges and sentenced him to six months' rigorous imprisonment on each charge. On the record the sentences were consecutive but in his grounds of judgment the learned District Judge stated that he ordered the two sentences to run concurrently.

Held, that sentences should not be ordered to run consecutively unless there were some good grounds for so doing.

MAGISTRATE'S APPEAL.

C. H. Koh for the appellant.

A. V. Winslow (D.P.P.) for the Crown.

Gordon-Smith, Ag. C.J. : — At the hearing of this appeal on the 11th February I had no hesitation in dismissing the appeal but I was somewhat concerned about the sentence.